

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Samuel Love,

Plaintiff,

v.

KSSF Enterprises LTD., a
California Corporation; **W Hotel**
Management, Inc., a California
Corporation;

Defendants,

Case No.

**Complaint For Damages And
Injunctive Relief For
Violations Of:** Americans With
Disabilities Act; Unruh Civil
Rights Act

Plaintiff Samuel Love complains of KSSF Enterprises LTD, a California Corporation; W Hotel Management, Inc., a California Corporation; ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He is a paraplegic. He uses a wheelchair for mobility.

2. Defendant KSSF Enterprises LTD, a California Corporation owns the W San Francisco Hotel located at 181 3rd Street, San Francisco, California,

1 currently and at all times relevant to this complaint. Defendant W Hotel
2 Management, Inc., a California Corporation, operates the Hotel currently and
3 at all times relevant to this complaint

4 3. Plaintiff does not know the true names of Defendants, their business
5 capacities, their ownership connection to the property and business, or their
6 relative responsibilities in causing the access violations herein complained of,
7 and alleges a joint venture and common enterprise by all such Defendants.
8 Plaintiff is informed and believes that each of the Defendants herein, is
9 responsible in some capacity for the events herein alleged, or is a necessary
10 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
11 the true names, capacities, connections, and responsibilities of other
12 Defendants are ascertained.

13 **JURISDICTION:**

14 4. The Court has subject matter jurisdiction over the action pursuant to 28
15 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
16 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

17 5. Pursuant to supplemental jurisdiction, an attendant and related cause
18 of action, arising from the same nucleus of operative facts and arising out of
19 the same transactions, is also brought under California's Unruh Civil Rights
20 Act, which act expressly incorporates the Americans with Disabilities Act.

21 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
22 founded on the fact that the real property which is the subject of this action is
23 located in this district and that Plaintiff's cause of action arose in this district.

24 **PRELIMINARY STATEMENT**

25 7. This is a lawsuit challenging the reservation policies and practices of a
26 place of lodging. Plaintiff does not know if any physical or architectural
27 barriers exist at the hotel and, therefore, is not claiming that that the hotel has
28 violated any construction-related accessibility standard. Instead, this is about

1 the lack of information provided on the hotel’s reservation website that would
2 permit plaintiff to determine if there are rooms that would work for him.

3 8. After decades of research and findings, Congress found that there was
4 a “serious and pervasive social problem” in America: the “discriminatory
5 effects” of communication barriers to persons with disability. The data was
6 clear and embarrassing. Persons with disabilities were unable to “fully
7 participate in all aspects of society,” occupying “an inferior status in our
8 society,” often for no other reason than businesses, including hotels and
9 motels, failed to provide information to disabled travelers. Thus, Congress
10 decided “to invoke the sweep of congressional authority” and issue a “national
11 mandate for the elimination of discrimination against individuals with
12 disabilities,” and to finally ensure that persons with disabilities have “equality
13 of opportunity, full participation, independent living” and self-sufficiency.

14 9. As part of that effort, Congress passed detailed and comprehensive
15 regulations about the design of hotels and motels. But, as importantly,
16 Congress recognized that the physical accessibility of a hotel or motel means
17 little if the 61 million adults living in America with disabilities are unable to
18 determine which hotels/motels are accessible and to reserve them. Thus,
19 there is a legal mandate to provide a certain level of information to disabled
20 travelers.

21 10. But despite the rules and regulations regarding reservation procedures,
22 a 2019 industry article noted that: “the hospitality sector has largely
23 overlooked the importance of promoting accessible features to travelers.”

24 11. These issues are of paramount important. Persons with severe
25 disabilities have modified their own residences to accommodate their unique
26 needs and to ameliorate their physical limitations. But persons with disabilities
27 are never more vulnerable than when leaving their own residences and having
28 to travel and stay at unknown places of lodging. They must be able to ascertain

1 whether those places work for them.

2 **FACTUAL ALLEGATIONS:**

3 12. Plaintiff planned on making a trip in February of 2021 to the San
4 Francisco, California, area.

5 13. He chose the W San Francisco Hotel located at 181 3rd Street, San
6 Francisco, California because this hotel was at a desirable price and location.

7 14. Plaintiff needs an accessible guestroom. He needs clearance around
8 beds, he needs accessible restroom facilities including accessible sinks,
9 accessible tubs or showers and accessible toilets. He needs sufficient
10 maneuvering clearance in and around the guestroom. He needs accessories to
11 be located within an accessible reach range. In short, he benefits from and
12 needs compliant accessible guestroom features.

13 15. Plaintiff went to the W San Francisco Hotel reservation website at
14 <https://www.marriott.com/hotels/travel/sfowh-w-san-francisco/> seeking to
15 book an accessible room at the location on October 6, 2020.

16 16. Plaintiff found that there was little information about the accessibility
17 of the rooms. For example, under the various room descriptions, it merely
18 states: "This room type offers mobility accessible rooms" and "This room type
19 offers accessible rooms with roll-in showers." These vague and conclusory
20 statements offer little detail. For example, there is no specific information on
21 whether the desk/table in the room is accessible, if the toilet is accessible, or if
22 the room has accessible clear floor space.

23 17. The defendant's reservation system failed to identify and describe the
24 accessible features in the guestroom chosen by the plaintiff in enough detail to
25 reasonably permit him to assess independently whether the particular
26 guestroom met his accessibility needs. The photos that accompany those
27 rooms do not show any accessible features.
28

1 18. This lack of information created difficulty for the plaintiff and the idea
2 of trying to book this room -- essentially ignorant about its accessibility --
3 caused discomfort for the Plaintiff.

4 19. Plaintiff would like to patronize this hotel but is deterred from doing so
5 because of the lack of detailed information through the hotel's reservation
6 system. Plaintiff not only travels frequently but is always on the lookout for
7 businesses that violate the law and discriminate against him and other persons
8 with disabilities, intending to have them comply with the law and pay statutory
9 penalties.

10 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
11 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
12 Defendants.) (42 U.S.C. section 12101, et seq.)

13 20. Plaintiff re-pleads and incorporates by reference, as if fully set forth
14 again herein, the allegations contained in all prior paragraphs of this
15 complaint.

16 21. Under the ADA, it is an act of discrimination to fail to make reasonable
17 modifications in policies, practices, or procedures when such modifications
18 are necessary to afford goods, services, facilities, privileges advantages or
19 accommodations to person with disabilities unless the entity can demonstrate
20 that taking such steps would fundamentally alter the nature of the those goods,
21 services, facilities, privileges advantages or accommodations. See 42 U.S.C. §
22 12182(B)(2)(A)(ii).

23 22. Specifically, with respect to reservations by places of lodging, a
24 defendant must ensure that its reservation system, including reservations
25 made by "any means," including by third parties, shall:

- 26 a. Ensure that individuals with disabilities can make
27 reservations for accessible guest rooms during the same
28 hours and in the same manner as individuals who do not

1 need accessible rooms;

- 2 b. Identify and describe accessible features in the hotels and
3 guest rooms offered through its reservations service in
4 enough detail to reasonably permit individuals with
5 disabilities to assess independently whether a given hotel
6 or guest room meets his or her accessibility needs; and
7 c. Reserve, upon request, accessible guest rooms or specific
8 types of guest rooms and ensure that the guest rooms
9 requested are blocked and removed from all reservations
10 systems.

11 *See* 28 C.F.R. § 36.302(e).

12 23. Here, the defendant failed to modify its reservation policies and
13 procedures to ensure that it identified and described accessible features in the
14 hotels and guest rooms in enough detail to reasonably permit individuals with
15 disabilities to assess independently whether a given hotel or guest room meets
16 his or her accessibility needs and failed to ensure that individuals with
17 disabilities can make reservations for accessible guest rooms during the same
18 hours and in the same manner as individuals who do not need accessible
19 rooms.

20 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
21 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
22 Code § 51-53.)

23 24. Plaintiff repleads and incorporates by reference, as if fully set forth
24 again herein, the allegations contained in all prior paragraphs of this
25 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
26 that persons with disabilities are entitled to full and equal accommodations,
27 advantages, facilities, privileges, or services in all business establishment of
28 every kind whatsoever within the jurisdiction of the State of California. Cal.

1 Civ. Code § 51(b).

2 25. The Unruh Act provides that a violation of the ADA is a violation of the
3 Unruh Act. Cal. Civ. Code, § 51(f).

4 26. Defendants' acts and omissions, as herein alleged, have violated the
5 Unruh Act by, inter alia, failing to comply with the ADA with respect to its
6 reservation policies and practices.

7 27. Because the violation of the Unruh Civil Rights Act resulted in difficulty
8 and discomfort for the plaintiff, the defendants are also each responsible for
9 statutory damages, i.e., a civil penalty. *See* Civ. Code § 52(a).

10 **PRAYER:**

11 Wherefore, Plaintiff prays that this Court award damages and provide
12 relief as follows:

13 1. For injunctive relief, compelling Defendants to comply with the
14 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
15 plaintiff is not invoking section 55 of the California Civil Code and is not
16 seeking injunctive relief under the Disabled Persons Act at all.

17 2. Damages under the Unruh Civil Rights Act, which provides for actual
18 damages and a statutory minimum of \$4,000 for each offense.

19 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
20 to 42 U.S.C. § 12205; and Cal. Civ. Code § 52(a).

21
22 Dated: December 2, 2020

CENTER FOR DISABILITY ACCESS

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26 By: _____

27 Russell Handy, Esq.

28 Attorneys for Plaintiff